

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

FIORE INDUSTRIES, INC., a New Mexico corporation,

Plaintiff,

v.

NAVIGATORS INSURANCE COMPANY, a foreign Corporation doing business in New Mexico,

Defendant.

Case No.:

NOTICE OF REMOVAL

TO THE CLERK OF THE COURT, ALL PARTIES HERETO, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the above-captioned matter, which was commenced as *Fiore Industries, Inc. v. Navigators Insurance Company*, Case No. D-101-CV-2021-00520 (“the State Court Action”) in the First Judicial District for the State of New Mexico, County of Santa Fe (“the State Court”), is hereby removed pursuant to 28 U.S.C. §§ 1332 and 1441 to the United States District Court for the District of New Mexico. In support of its Notice of Removal, Defendant Navigators Insurance Company (“Navigators” or “Defendant”), through its undersigned counsel, hereby state as follows:

1. This insurance coverage action was commenced against Navigators by Fiore Industries, Inc. (“Fiore” or “Plaintiff”) on March 11, 2021 in the First Judicial District for the State of New Mexico, County of Santa Fe (the aforementioned “State Court Action”). A true and correct copy of the Summons and Complaint, with attachments, filed in the State Court

Action is attached hereto as **Exhibit 1**. These constitute all of the process, pleadings, and orders filed in in the State Court Action.

2. This matter concerns coverage under Navigators SmartPolicy No. CH18DOL323990IV, issued to Fiore Industries, Inc., as the Named Insured, for the effective Policy Period of June 10, 2018 to June 10, 2019 (the “Policy”). As is potentially relevant here, the Policy, subject to all terms, conditions, limitations and exclusions set forth therein, affords a \$1,000,000 maximum aggregate limit of liability for all Loss, including Costs of Defense, under its DIRECTORS AND OFFICERS LIABILITY Coverage Part (the “D&O Coverage”).

3. Specifically, this matter concerns coverage for an investigation of Fiore (the “Investigation”) by the Office of the Inspector General for the National Aeronautics and Space Administration and the United States Attorney (collectively, the “Government”). The Investigation ultimately resulted in a settlement between Fiore and the Government.

4. In connection with the Investigation, Fiore has submitted claims to Navigators substantially in excess of the limits of the Policy. Navigators has paid a total of \$177,857.74 in connection with these claims and denies any further liability for them under the Policy. The remaining limits of the Policy total \$822,142.26.

5. In the Complaint filed in the State Court Action, Fiore asserts allegations of breach of contract, insurance bad faith, violation of unfair insurance practices act, and violation of the New Mexico unfair trade practices act. Navigators categorically denies these allegations.

6. Plaintiff Fiore is a citizen of New Mexico, with its principal place of business in Bernalillo County, New Mexico. Navigators is a New York corporation with its principal place of business in Hartford, Connecticut. By the State Court Action, Fiore seeks to recover the full

amount of the remaining limits of the Policy from Navigators, plus unspecified additional damages in excess of those limits.

7. Thus, this is a civil action between citizens of different states wherein the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Accordingly, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the case may be removed to this Court pursuant to 28 U.S.C. § 1441. Additionally, removal to this district is proper under 28 U.S.C. § 1441(a) because this district and division embraces the place where the removed action is pending.

8. On June 10, 2021, Navigators received a copy of the Summons and Complaint filed in the State Court Action and agreed to waive formal service of process. No proceedings have occurred in the State Court Action, and Navigators has not yet appeared in that action. Accordingly, this Notice of Removal is timely because it has been filed within the time permitted under 28 U.S.C. §1446(b) and Federal Rule of Civil Procedure 6(a)(1)(C).

* * *

Based on the foregoing, Navigators hereby removes this action to the United States District Court for the District of New Mexico.

Dated: Dallas, Texas
July 12, 2021

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

/s/*Coleman M. Proctor*

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CERTIFICATE OF SERVICE

I, Coleman M. Proctor, hereby certify that on this 12th day of July 2021, I served the foregoing document on all counsel of record via email and first class mail, postage prepaid.

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